D.T.E. 01-81

Petition of Bay State Gas Company, pursuant to G.L. c. 164, § 94 and
220 C.M.R. § 6.00 et seq., for Authority to Establish a Gas Cost Incentive Mechanism.

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I. INTRODUCTION

On October 26, 2001, pursuant to G.L. c. 164, § 94 and 220 C.M.R. § 6.00 et seq., Bay State Gas Company ("Bay State" or "Company") filed with the Department of Telecommunications and Energy ("Department") a petition for authorization to establish a Gas Cost Incentive Mechanism ("GCIM"). Bay State indicates that its petition is a cost reduction mechanism and its primary purpose is to achieve lower overall gas costs for customers. If approved, Bay State proposes that the GCIM would be in effect for an initial three-year period. The petition was docketed as D.T.E. 01-81.

On December 4, 2002, the Department issued a Notice of Public Hearing and Procedural Conference. On January 2, 2002, the Massachusetts Community Action Program Director's Association, Inc. ("MASSCAP") filed a Motion to Dismiss, or in the alternative, to consolidate this proceeding with D.T.E. 01-100, the Department's Notice of Inquiry into the appropriateness of the use of risk management techniques to mitigate natural gas price volatility. MASSCAP recommended that the Department suspend action on Bay State's petition until the proceedings in D.T.E. 01-100 are concluded.[1] MASSCAP argued that the Department should dismiss Bay State's petition because the GCIM proposal fails to address price volatility and

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[1] On January 3, 2002, the Attorney General joined MASSCAP's Motion to Dismiss.

therefore conflicts with the Department's investigation in D.T.E. 01-100.[2] The Department determined that the Company's petition should be investigated separately without impacting the generic investigation of volatility mitigation in D.T.E. 01-100.

Pursuant to notice duly issued, the Department held an initial public hearing and procedural conference on January 3, 2002. The Attorney General, the Commonwealth of Massachusetts Division of Energy Resources ("DOER"), AllEnergy Gas & Electric Marketing ("AllEnergy") and MASSCAP were granted intervenor status.

The Company sponsored the testimony of Stephen H. Bryant, Vice President of Regulatory and Government Policy for Bay State, Francisco C. DaFonte, Director of Energy Supply Services for Bay State; and Karl E. Stanley, Director of Risk Management and Capital Allocation for NiSource, Inc.[3] The Attorney General sponsored the testimony of Timothy Newhard, Financial Analyst. AllEnergy sponsored the testimony of Rebecca Bachelder, Director of Legislative and Regulatory Affairs for AllEnergy. Evidentiary hearings were conducted at the Department's offices on May 6, June 19, and June 20.[4] The evidentiary record consists of 386 exhibits and 16 record requests. Bay State, the Attorney General, DOER, and AllEnergy filed initial briefs. Bay State, the Attorney General, and AllEnergy filed reply briefs.

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[2] The Department issued its Order in D.T.E. 01-100 on October 9, 2002.

[3] Bay State is a wholly-owned subsidiary of NiSource, Inc. (Tr. 2, at 135-136).

[4] On May 6, 2002, Bay State modified its original proposal to eliminate downside price risk to customers. Hearings were suspended to allow revised testimony to be filed and to allow the parties the opportunity to issue further discovery (Tr. 1, at 10, 11).

II. SUMMARY OF BAY STATE'S PROPOSAL

Bay State's proposal seeks Department approval to utilize various financial instruments and trading strategies in an attempt to lower the overall commodity cost associated with procuring natural gas for an initial three-year period (Exh. BSG-1, at 1). The Company expressly stated that the GCIM is not intended to be a hedging proposal, but instead it is intended to be an incentive proposal that should be considered under the Department's guidelines for incentive-based ratemaking (Exh. BSG-1, at 12-19). Bay State indicated that its proposal is a cost reduction mechanism, not a price stability program, and its primary purpose is to achieve a lower overall gas cost for customers compared to the Company's existing gas cost recovery mechanism (id. at 19).

The Company's proposal contained two primary elements, a performance benchmark and a sharing mechanism (Exh. BSG-1, at 18). The results of Bay State's gas purchasing practices would be benchmarked against standard purchase indices that the Company asserts are widely relied upon by the gas industry to determine the level of costs recoverable from customers (id.).[5] Bay State initially proposed an incentive mechanism where the Company and

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5 Benchmark indices include: IFGMR Tennessee (100 Leg) Texas (zone 0), IFGMR Tennessee (500 Leg) La. & Offshore (zone 1), IFGMR Tennessee (800 Leg) La. & Offshore (zone 1), Gas Daily MCI Tennessee Zone 5, Gas Daily MCI Tennessee Zone 6 (delivered), Gas Daily MCI Dracut (into TN), Gas Daily MCI Niagara (NFG, Tenn),

(continued…)

ratepayers would share a portion of net losses and gains based on the difference between the achieved price and published index benchmark (Exh. DTE-3, at 4).[6] The Company proposed to determine net trading gains or losses semi-annually to coincide with the Cost of Gas Adjustment Clause ("CGAC") periods (Exh. BSG-4, at 4). At the hearing on May 6, 2002, the Company requested that the Department strike the proposed gain/loss sharing structure that was initially proposed, and consider an amended version which, according to the Company, is more favorable to customers (Tr. 1, at 10, 11). The Company filed the amended version of the proposal on May 10, 2002, and evidentiary hearings were held on June 19 and June 20, 2002.

Bay State's performance would be measured by comparing actual purchase prices, including transaction costs associated with financial derivatives, to independently determined benchmark data that reflect market price at the same purchase location (Exh. BSG-1, at 16). The index applied to each purchase would be for the specific geographic region where and when the purchase is made (id.). Benchmark prices will be published in either Gas Daily or Inside FERC, with an added reliability premium applied to longer-term purchases made during the winter period of November through March (id. at 16-19). Bay State proposed a reliability

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5 (…continued)
IFGMR Texas Eastern East Texas Zone, IFGMR Texas Eastern South Texas Zone, IFGMR Texas Eastern West Louisiana Zone, Gas Daily MCI Texas Eastern M3, Gas Daily MCI Algonquin city-gates, Gas Daily MCI Algonquin, Gas Daily MCI Iroquois Waddington, Gas Daily's Joint Facilities (Maritimes and PNGTS) Westbrook Dracut (into TN).

6 Under the original proposal, ratepayers would not receive benefits from gains that exceeded four percent of the variance and they would not subsidize any losses that exceeded four percent of that difference (Exh. BSG-3 at 28; AG-1 at 4).

premium of $0.0125 per MMBtu based on the most recent weighted average price paid, from the 2000-2001 winter period (id. at 18-19).

The amended sharing structure assigned 25 percent of all gains to customers with 75 percent allocated to the Company, and assigned all losses to the Company (Exh. BSG-2, at 3). The GCIM program has a $5 million loss limit (id. at 16). Bay State testified that it proposes to trade approximately 25 percent of the portfolio, based on normal year requirements (Tr. 1, at 40). The Company asserted that the GCIM could provide significant benefits to ratepayers, without customers bearing any risk of potential losses (Exh. BSG-1, at 3). Bay State maintains that commodity charges in the CGAC will be at or below market indices (Exh. BSG-4).

In order to implement the GCIM, the Company proposed that the CGAC tariff be modified to reflect any gains associated with the program, as well as including certain transaction costs associated with financial contracts that would be necessary for Bay State to achieve a potential gas cost reduction (Exh. BSG-1, at 13). The Company testified that transaction costs are the costs associated with executing approved financial instruments and contracts including, but not limited to, brokerage fees, options and futures contracts, exchange fees, National Futures Association fees, brokerage commissions, and premiums associated with options contracts (id. at 13). Under the Company's amended proposal, transaction costs will only be recovered if the program achieves enough gains to cover those costs (Exh. BSG-2, at 3). The Company further stated that it would only propose to recover GCIM-related administrative costs at the time of a future rate proceeding[7] to the extent that customers continued to see a net benefit from the GCIM program (Bay State Brief at 8).

Bay State indicated that its proposal was modeled after a methodology used by its affiliate, Northern Indiana Public Service Company (Exh. BSG-1, at 2). According to the Company, that methodology was reviewed and approved by the Indiana Utility Regulatory Commission (id.). The Company noted, however, that other jurisdictions have not adopted a uniform approach to incentive mechanisms for gas costs (id. at 16).

III. POSITIONS OF THE PARTIES

A. The Attorney General

The Attorney General argues that the GCIM proposal will increase direct transaction costs, the cost of gas purchases, and capital costs, while stifling nascent competition in the gas supply market (Attorney General Brief at 4). The Attorney General contends that the Company has failed to demonstrate that the GCIM proposal would yield least-cost service or benefit ratepayers (id. at 3). Despite the fact that the Company's GCIM proposal was modified to eliminate customers' sharing in trading losses, the Attorney General argues that the customers would still bear the burden of new incremental costs such as: (1) new transaction costs; (2) additional personnel; (3) new computer hardware and software; (4) new accounting

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7 Bay State is operating under a distribution rate freeze through November 2004 (Tr. 2, at 165).

and auditing costs; (5) added insurance costs; (6) additional regulatory costs and other associated transaction costs; and (7) ultimately an increased cost of capital (id. at 4).

The Attorney General additionally notes that the GCIM proposal will add further risk to the Company's bond ratings, which are currently one of the lowest rated bonds of any regulated utility in Massachusetts (id.). The Attorney General argues that lower bond ratings could potentially affect the Company's financial integrity and ultimately its cost of equity (id. at 4, citing Exh. AG-2, at 4). The Attorney General asserts that Bay State has not presented any evidence showing that customers' sharing in 25 percent of unknown and speculative gas cost savings under the GCIM would outweigh these numerous incremental costs or guarantee that there would actually be benefits from the proposal (id. at 5, citing Tr. 2, at 81; Exh. BSG-4, at 3).

The Attorney General contends that although Bay State customers may or may not receive benefits from Bay State's hedging transactions, customers will definitely pay the incremental cost of implementing the program (id. at 5). The Attorney General claims that the Company's GCIM proposal fails to meet the Department's standards that rates under an incentive proposal must be just and reasonable and provide a framework that ensures safe, reliable, least-cost service (id.; citing Incentive Regulation for Gas and Electric Companies, D.P.U. 94-158 at 52 (1995).

The Attorney General argues that Bay State's GCIM proposal would stifle any advances that Massachusetts has made towards competition, and that the Department should not allow new products for the monopoly local distribution company that the competitive market can and should provide (id. at 6).[8] The Attorney General contends that allowing these products to be offered by the regulated utility would stifle gas supply competition by placing the competitive suppliers at a disadvantage since the utility would not incur the customer acquisition costs faced by the competitive market (id., citing Tr. 2, at 151-155, 161-163; Tr. 3, at 332, 339-341; Exh. AE-1). Additionally, the Attorney General notes that the retention of margins/incentives by the Company will have a detrimental effect on the profitability of alternative suppliers, and provide a strong incentive for the Company to hinder any attempt by its customers to leave the LDC (id. at 7).[9]

Finally, the Attorney General argues that Bay State's GCIM proposal fails to meet the Department's requirement that an incentive proposal be consistent with market-based regulation and enhanced competition. The Attorney General also contends that the GCIM does not complement the ongoing movement towards a more market-based utility framework (id., citing D.P.U. 94-158 at 58 (1995)).

B. Division of Energy Resources

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8 The Attorney General argues that products such as gas services with fixed prices, capped prices, or any price variation that can be created with or without hedging techniques should remain in the competitive market (Attorney General Brief at 6).

9 According to the Attorney General, the Company claims that it enjoys no advantage over alternative suppliers because there are no alternative or competitive suppliers for the vast majority of the customers that it serves (Attorney General Brief at 6, citing Tr. 2, at 158-160). The Attorney General contends that this argument ignores the potential harm to both the current competition for industrial and large commercial customer gas supply and future competition for smaller customer gas supply (id., citing Tr. 2, at 158-159; Tr. 3 at 339-341).

DOER agrees with the Company that the proposed GCIM has the potential to result in lower commodity costs for Bay State default service customers (DOER Brief at 5). DOER maintains that allocating 100 percent of net losses to the Company and its shareholders will provide significant incentives for the Company to enter into least-cost, prudent portfolio management risk/hedges both from a qualitative and quantitative perspective (id.).

While DOER expresses support for the GCIM, it recommends that the Department approve the GCIM proposal subject to five modifications (id.). First, DOER recommends that the GCIM be limited to the residential customer class (id.). DOER cautions that the Company's proposal has the potential to negatively affect the vitality of existing competition within certain rate classes, and therefore recommends that the GCIM be restricted to the residential customer class that has virtually no competitive supply options (id. at 6). DOER asserts that the residential customer class is the only customer class in Bay State's service territory that has only one product option -- default service (id.). DOER argues that allowing the Company to apply the GCIM to customer classes that have a competitive supply option may create barriers to the development of competitive markets in Massachusetts (id. at 7). DOER further cautions that the financial incentives associated with the GCIM would provide Bay State with incentives to expand its default service, and would be contrary to the development of competitive markets (id. at 6).

Second, DOER suggests that the Company's proposed reliability premium for purchases made during the period of November through March should be reduced (id. at 8). DOER notes that the proposed premium is based on the average reliability premium paid over the 2000-2001 peak season (id.). DOER asserts that the premium was based on a single season average, and does not reflect the historical average of domestic purchases (id.). To mitigate the potentially significant year-to-year fluctuations, DOER recommends that the reliability premium be based on a multi-year average of domestic purchases (id. at 9). DOER suggests a three-year historical period to coincide with the three-year term of the GCIM proposal (id.).

Third, DOER contends that GCIM benefits should be realized by customers in the period for which the respective transactions were executed (id. at 9). DOER notes that because the GCIM postpones aggregation and accounting of all gains and losses until the end of an applicable period, any benefits from the GCIM transactions executed in one period will not be realized until approximately one year later (id. at 10). DOER suggests that applying any potential gains to the same period in which they were realized will result in benefits accruing to the existing residential customers as opposed to future customers (id.). Fourth, DOER recommends that the CGAC tariff be revised to describe unambiguously the transaction cost allocation and to limit GCIM hedging activity (id. at 13). DOER suggests that the Department require the Company to incorporate language in the CGAC tariff that specifically limits the amount of gas hedged (id. at 14). With respect to the Company's proposal to limit GCIM hedging activity, DOER does not oppose the amount of 80 percent of normal requirements (id.).

Finally, DOER recommends that the Department require the GCIM to terminate on the earliest of the following occurrence: (a) expiration of the proposed three year term; (b) implementation of new base rates resulting from a Company base rate proceeding; or (c) the Department issuance of a decision in the upcoming review of the transition period to a workably competitive natural gas market (id. at 16).

C. AllEnergy

AllEnergy asserts that Bay State's GCIM proposal violates the Department's rules regarding incentive regulation, the promotion of competition, and competitive affiliate relationships with the monopoly LDC (AllEnergy Brief at 2). With regard to incentive regulation, AllEnergy claims that under Department precedent, incentive regulation, such as Bay State's GCIM proposal, is not appropriate where a competitive market exists (id. at 3, citing, Investigation into Unbundling of Gas LDCs' Services, D.T.E. 98-32-B, at 4 (1999)). AllEnergy contends that the GCIM proposal violates the Department's long-standing preference for a broad-based and comprehensive incentive mechanism because the proposal does not include all the risks and the costs associated with selling and delivering gas commodity in a retail market (id. at 11, citing Exhs. AE-1, at 9, 11 and BSG-4; Tr. 3, at 151, 155).

AllEnergy notes that the risk-reward sharing mechanism proposed by Bay State "is significantly out of balance for Bay State vis-á-vis competitive suppliers" because, under the proposal, Bay State incurs price risk but not the volume risk, which remains with customers (Exh. AE-1 at 11). AllEnergy argues that the sharing mechanism, if approved, will result in a tilting of the playing field in favor of Bay State to the detriment of competitive suppliers who bear both price and volume risks (id. at 11-12). AllEnergy explains that Bay State's incentive mechanism covers only the costs associated with the purchase of domestic gas supplies while excluding capacity costs, the costs of non-domestic supplies, and administrative costs (AllEnergy Brief at 8). Since competitive suppliers must include all these elements in the prices they charge their customers, approval of the GCIM proposal will make it difficult for marketers to compete with Bay State in the gas sales business (id. at 13; AllEnergy Brief at 12-13).

AllEnergy notes that Bay State, as an incumbent monopoly, enjoys significant cost savings over competitive suppliers, including avoidance of customer acquisition costs (AllEnergy Brief at 5). Therefore, AllEnergy argues that allowing Bay State to implement a GCIM proposal would confer on the Company additional benefits or subsidies – such as avoidance of billing and administrative costs, elimination of volume risk, and recovery of prior year's level of supply reservation charges (id. at 8).

AllEnergy contends that approval of the GCIM will work to the detriment of third-party suppliers and the development of retail competition in Massachusetts (AllEnergy Brief at 2, 11, citing, Exh. AE-1, at 8, 11; Tr. 3, at 151). AllEnergy argues that such favorable treatment of a regulated utility engaged in a competitive merchant business goes against the Department's policy on affiliate relationships and preferential treatment because Bay State's gas supply operation would become a "Competitive Energy Affiliate" (AllEnergy Brief at 10, citing, Affiliate Rules, D.P.U. 96-44, at 1 (1996); AllEnergy Reply Brief at 4, citing, 220 C.M.R. §§ 12.02, 12.03).

With regard to the effect of the GCIM proposal on the development of retail competition in Massachusetts, AllEnergy argues that the incentive mechanisms contained in Bay State's GCIM proposal threaten the development of a competitive retail market in Massachusetts: (1) by reducing the ability of third-party suppliers to compete on a level playing field; and (2) by creating strong incentives for the Company to discourage its customers from migrating to competitive suppliers (Exh. AE-1 at 7-11; AllEnergy Brief at 4-7 and 11-13, citing, Incentive

Regulation, D.P.U. 94-158 (1995)). AllEnergy argues that if Bay State is allowed to earn incentives on gas purchases, the Company will begin to view third-party suppliers as competitors in the merchant business, and this could lead to market power abuses by Bay State, as well as the deterioration of Bay State support to marketers for the development of a fully competitive market within the Commonwealth (Exh. AE-1, at 7-11; AllEnergy Brief at 5-6). AllEnergy contends that the potential to earn profits on gas purchases provides Bay State with a strong incentive to discourage its default service customers from migrating to competitive suppliers and a strong disincentive for the Company to exit the merchant business once it starts to earn profits on the sale of gas (Exh. AE-1, at 8-9).

AllEnergy notes that there is active and growing competition in the commercial and industrial markets in Bay State's service territory which could be harmed if the GCIM proposal is approved (AllEnergy Brief at 3, citing, Exhs. AE 1-4; RR AE-2; RR D.T.E.-8 (Protected), Tr. 3, at 325-326)); but admits that "there is no competition in residential markets, nor is there likely to be in the near future due to numerous barriers to a residential program." (AllEnergy Initial Brief at 3, citing, Exhs. AE 1-4; RR AE-2; RR D.T.E.-8; Tr. 3, at 325-326). AllEnergy adds that given the state of competition in the residential market, it would not oppose a GCIM proposal that was limited to the residential market only, but "will vigorously oppose any proposal with an incentive in the commercial and industrial market."(Tr. 3, at 36).[10]

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10 AllEnergy explains that despite the theoretical attractiveness of isolating Bay State's proposal to the residential market, as a practical matter, Bay State does not isolate specific resources in its portfolio and designate them for a specific customer class.

(continued...)

AllEnergy argues that the GCIM proposal, if approved, will neither serve as a vehicle to the development of a more competitive market, nor enhance competition where competition already exists, but will instead "signal an end to the Department's support of competition enabling policies and render meaningless the protections against anticompetitive conduct established in its precedent and codified in 220 CMR 12.00 et seq." (AllEnergy Brief at 1, 4, citing, Incentive Regulation, D.P.U. 94-158 at 58-59, 62-63 (1995)). AllEnergy, therefore, requests the Department to reject Bay State's GCIM proposal (AllEnergy Reply Brief at 8).

AllEnergy recommends that if the Department does not reject Bay State's GCIM proposal, then the proposal should be modified so that (a) it is limited to the residential market only; (b) it clearly states the method that Bay State will use to split its portfolio between residential and commercial and industrial classes which should be reviewed by the Department; (c) it limits the terms of hedges to the upcoming CGAC period; and (d) it designates a portion of the incentives that Bay State earns under the GCIM proposal to the development of retail competition in Massachusetts so as "to improve competitive access to customers who have not yet switched." (AllEnergy Reply Brief at 9). AllEnergy further suggests that in order to ensure fair competition in the retail market, the Department should remove Bay State's reconciliation mechanism, and include demand charges and net all administrative costs against gross margins as a condition for Bay State to earn gas cost incentives (AllEnergy Brief at 12).

D. Bay State

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10 (…continued)
AllEnergy notes that Bay State operates its resource portfolio as a whole, making it difficult to isolate and implement an incentive proposal for the residential market only (AllEnergy Brief at 3, n.1).

The Company maintains that the proposed GCIM is designed to achieve the Department's overall goal of providing marketplace benefits to customers through objective incentives to encourage the least-cost procurement of natural gas supplies (Bay State Brief at 9). Bay State contends that the GCIM provides objective benchmarks that will give the Company the appropriate incentives for least-cost gas procurement (id. at 12). In addition, the Company argues that by assuming all financial risk associated with the use of financial derivatives that could result from above-market gas costs, the Company is also subject to financial penalties if it does not perform by meeting or beating market prices (id. at 10). Bay State contends that customers will have the opportunity for reduced prices and, at worst, will simply pay market prices (id. at 12).

The Company maintains that the Attorney General's arguments concerning risks associated with the GCIM are unfounded (id. at 21). Bay State argues that the Department should reject the Attorney General's assertions that the GCIM proposal would increase the Company's cost of capital and expose ratepayers to additional financial risk (id. at 21). The Company states that the GCIM program has a $5 million loss limit (id. at 23). Bay State testified that it proposes to trade against approximately 25 percent of the portfolio, based on normal-year requirements (Tr. 1, at 40). The Company notes that it is under a rate freeze that extends through November 2004, and therefore could not pass any potential losses associated with the GCIM program to customers until then (id.).

Bay State contends that its GCIM proposal is fully consistent with Department guidelines set forth in Incentive Regulation, D.P.U. 94-158 (1995) (id. at 9). The Company argues that AllEnergy has mischaracterized the nature of the GCIM in an effort to depict the program as anti-competitive (Bay State Reply Brief at 2). Bay State maintains that it is not procuring new customers, it is merely seeking to serve existing customers more efficiently (id. at 3). The Company maintains that default customers will see exactly the same CGAC service under the GCIM, the only difference being that the price will be no higher than market and may be lower than what it would be under the current regulatory regime (id.).

Bay State maintains that its procurement of least-cost, diverse and reliable supply for its customers would not change as a result of the GCIM (Bay State Brief at 26). Bay State contends that, if approved, its GCIM program would be easily reviewable and simple to administer (id. at 12). Bay State believes that, given the lack of competition for most natural gas customers, the three-year GCIM provides a real opportunity for customers to achieve savings that are not otherwise achievable during the transition to a fully competitive market (id. at 12). The Company states it would not object to a determination by the Department that the GCIM should be terminated if the Department determines that it was somehow impeding competition (Bay State Reply Brief at 11).

In response to DOER's suggestion to restrict the application of the GCIM to the residential customer class, Bay State argues that it would not be fair to exclude commercial and industrial customers from the opportunity for reduced gas costs (id. at 7). Bay State notes that nearly seven years have elapsed since the advent of full unbundling for commercial and industrial customers, yet some commercial and industrial classes appear to be underserved by competitive suppliers (id.). The Company states that it would not oppose the limitation of the GCIM to only residential customers, although it would prefer to apply the GCIM to all customer classes (id. at 8). Bay State contends that Department approval of the GCIM will achieve the goals set forth in incentive regulation by allowing residential customers, that do not have competitive alternatives, to benefit from market opportunities for reduced gas prices during the transition to a fully competitive market (Bay State Brief at 10). Bay State argues that there is currently no competition in the residential market and no realistic prospect of competition developing during the term of the GCIM (id. at 13).[11]

In response to DOER's proposal that Bay State adjust the reliability premium to reflect a three-year historical average, the Company argues that the reliability premium fluctuates based on market conditions (Bay State Reply Brief at 8). Bay State maintains that the one year reliability premium reflects the most recent data available and more accurately represents market conditions. However, the Company would not object to DOER's proposed use of a three-year average, as a reasonably representative amount for a reliability premium (id.).

In response to DOER's suggestion that Bay State attempt to reflect GCIM activities as part of mid-period revisions to the GCAC, the Company maintains that it is not in a position to forecast the GCIM outcome at the beginning of or during a CGAC period (id. at 9). To the extent that GCIM results impact the projected CGAC recovery at the five percent level, the Company would file a mid-course correction to the CGAC (id.). The Company has no objection to DOER's suggestion to amend the CGAC tariff to clarify transaction cost responsibility and establish limits on GCIM hedging activity to a level "not to exceed 80 percent

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11 The Company notes that only 72 of Bay state's 249,265 residential customers are currently served by competitive suppliers (Bay State Brief at 12, citing Exh. AE 1-4; Tr. Vol. 2, at 76;).

of normal requirements" (id. at 9-10). The Company suggests that these changes be made in revised CGAC tariffs filed as part of a compliance filing (id. at 9).

In response to DOER's suggestion that the Department maintain some flexibility with respect to the termination of the GCIM, Bay State would not oppose an assessment of whether the GCIM resulted in net benefits in the context of its next distribution rate proceeding, but does not agree that the GCIM should automatically terminate with the implementation of a future rate base proceeding (id. at 10).

IV. THE ATTORNEY GENERAL'S MOTION TO REOPEN RECORD TO ADMIT POST-HEARING EVIDENCE

A. Positions of the Parties

1. The Attorney General

On November 15, 2002, the Attorney General filed a motion ("AG Motion") to include into the record of this proceeding two proposed exhibits, AG-4 and AG-5. Proposed exhibit AG-4 is a Federal Energy Regulatory Commission staff report ("FERC Report"), issued in August 2002, addressing the potential manipulation of electric and natural gas prices. Proposed exhibit AG-5 is a newspaper article, Natural Gas Prices Thrown in Doubt, Wall Street Journal, November 12, 2002, ("WSJ Article"), discussing the reliability of gas price indices and gas price manipulation (id.). The Attorney General states that this evidence became available after the close of hearings, and after all parties submitted their briefs (AG Motion at 1).

The Attorney General argues that there is good cause for the Department to consider these documents in this docket (id.). The Attorney General asserts that the new evidence only recently became available on the issue of price fixing and gaming in the natural gas market and that this new evidence has a material bearing upon this case (id.). The Attorney General argues that the use and reliability of gas price indices was a contested issue during the proceedings (id. at 3).

2. Division of Energy Resources

On November 20, 2002, DOER filed a response to the AG Motion ("DOER Response"). DOER argues that it would be appropriate and useful for the Department to reopen the record and allow the Department to consider the limited amount of additional evidence (DOER Response at 1). DOER maintains that the FERC Report raises concerns about market integrity that could alarm consumers if it were not admitted and carefully reviewed by the Department (id. at 2). DOER requests that the Department also admit into evidence the Comments of Platts[12] on FERC Staff Report ("Platts Comments") (id. at 1). DOER maintains that the Platts Comments provide independent, original and authoritative information about how published price data is compiled (id. at 2). While DOER supports the admission of the FERC Report, DOER disputes the Attorney General's contention that the WSJ article is relevant to the GCIM proceeding (id.). DOER argues that the WSJ Article has no independent, intrinsic evidentiary value and requests that it not be admitted (id.).

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12 Platts, an independent publishing firm, is the publisher of Gas Daily, wherein the gas indices are published. Platts Comments were filed in response to the FERC Report (DOER Response at 1).

3. Bay State

On November 20, 2002, the Company filed an Opposition to the AG Motion ("Bay State Opposition"). Bay State argues that the Attorney General has failed to meet the Department's standard for reopening the record (Bay State Opposition at 1). Bay State contends that the Attorney General's evidence, even if allowed, would not have a material impact on the proceeding (id.). With respect to the WSJ Article, Bay State maintains that a newspaper article does not constitute the type of evidence necessary to alter the Department's findings of fact or policy conclusions with respect to Bay State's proposed GCIM (Bay State Opposition at 3). With respect to the FERC Report, Bay State notes that it is an "Initial Report", reflecting only the views of FERC Staff and has not been considered by the full Commission (id.). The Company notes that the FERC Report is focused on possible manipulation of indices in the California market (id. at 6). Bay State argues that the FERC Report does not identify NiSource as a participant in any alleged manipulation, nor does it provide evidence of any manipulation in the New England Region (id.). Therefore, Bay State maintains that the evidence would not have a material impact on substantial issues in this proceeding and should be rejected (id.)

B. STANDARD OF REVIEW

The Department's Procedural Rule on reopening hearings, 220 C.M.R. § 1.11(8), states, in pertinent part, "[n]o person may present additional evidence after having rested nor may any hearing be reopened after having been closed, except upon motion and showing of good cause." Good cause for purposes of reopening has been defined as a showing that the proponent has previously unknown or undisclosed information regarding a material issue that would be likely to have a significant impact on the decision. Machise v. New England Telephone and Telegraph Company, D.P.U. 87-AD-12-B at 4-7 (1990); Boston Gas Company, D.P.U. 88-67 (Phase II) at 7 (1989); Tennessee Gas Pipeline Company, D.P.U. 85-207-A at 11-12 (1986). Under the ground rules for this proceeding, exhibits offered after the close of hearings must be accompanied by a motion to reopen the record and supported by appropriate affidavits. D.T.E. 01-81, Hearing Officer Memorandum Regarding Ground Rules, Service List (January 3, 2002). If objected to by any party, such exhibits labor under a heavy burden of untimeliness and will only be marked and admitted into evidence for good cause shown.

C. ANALYSIS AND FINDINGS

The Department finds that good cause for reopening the record in this proceeding has not been established. First, the Attorney General filed the FERC Report approximately three months after the report was issued and four months after submission of Reply Briefs and close of the evidentiary record. The Attorney General has offered no explanation for the delay in moving to admit that exhibit. The Department concludes that good cause for admission of the FERC Report has not been shown.

Further, we conclude that the FERC Report, even if admitted, would not have a significant impact on the decision. The FERC Report was limited to the possible manipulation of indices in the California market. Since Bay State's proposal involves markets in the New England region, not California, the Department finds that the FERC Report is not relevant to this proceeding. Additionally, the FERC Report is an ongoing investigation by FERC staff and does not constitute proof of any issues raised, particularly since FERC has not yet acted on the report. Since the FERC Report itself is not being admitted, there is no need to admit Platts Comments in response.

As to the WSJ article, the Department agrees with Bay State and DOER that the WSJ article would not have a significant impact on the decision. Furthermore, newspaper articles, without corroborating evidence, do not constitute the type of evidence "on which reasonable persons are accustomed to rely in the conduct of serious affairs." 220 CMR §1.10(1). Our regulations allow for the exclusion of such evidence and we conclude that the WSJ Article should not be admitted at this late stage of the proceeding.

V. STANDARD OF REVIEW

In Incentive Regulation, D.P.U. 94-158, at 40-41 (1995)("D.P.U. 94-158"), the Department stated that the primary objective of incentive regulation is:

> to provide marketplace benefits to consumers by promoting more efficient utility operations, cost control, and opportunities for reduced electric and gas rates. In addition to delivering marketplace benefits to consumers, incentive regulation should also provide an opportunity for each electric and gas company to adjust to competition as it develops. Incentive regulation should accomplish this while still achieving the Department's longstanding goal of safe, reliable, and least-cost service.

The Department recognized that an incentive mechanism should (1) be consistent with Department regulations, statutes, and governing precedent; (2) be consistent with market-based regulation and enhanced competition; (3) safeguard system integrity, reliability, and current policy objectives; (4) reward utility performance and address exogenous costs; (5) focus on comprehensive results; (6) incorporate well-defined, measurable indicators; (7) be consistent with accounting standards and acceptable within the financial community; (8) have a minimum time horizon to give the incentive plan enough time to achieve its goals; (9) provide for reevaluation of the program at least once during its term to monitor goal attainment and make required modifications, as necessary; and (10) be administratively simple. D.P.U. 94-158, at 57-66 (1995).

The Department has held that any incentive proposal is subject to the standard of review of G.L. c. 164, § 94 which requires that rates be just and reasonable. Id. at 52. As in a rate case under G.L. c. 164, § 94, the burden of demonstrating that a particular incentive proposal is consistent with that standard is on the proponent. Id. The proponent is required to demonstrate that the incentive proposal is more likely than current regulation to advance the Department's traditional goals of safe and reliable energy service and to promote the objectives of economic efficiency, cost control, lower rates and reduced administrative burden in regulation. Id. at 57.

The Department has established specific evaluation criteria for incentive ratemaking proposals. Id. at 57-66. Incentive mechanisms must complement the ongoing movement towards a more a more market-based utility framework. Id. at 58. Incentive mechanisms should be designed to serve as a vehicle to a more competitive environment and to improve the provision of monopoly services. Id. at 59. In addition, incentive proposals should avoid the cross-subsidization of competitive services with revenues derived from the provision of monopoly services. Id.

While the primary focus of any incentive proposal should be to achieve cost reductions, the Department continues to recognize its mandate to ensure the continued delivery of safe and reliable service to the public. Id. at 60. The Department will not accept incentive proposals that result in reduced safety, nor will it permit incentive proposals to be used as a vehicle to weaken service reliability or existing standards of customer service. Id.

The Department encourages broad-based incentive proposals that are designed to achieve specific measurable results. Id. at 63. Incentive proposals should identify, where appropriate, measurable performance indicators and targets that are not subject to miscalculation or manipulation. Id.

VI. ANALYSIS AND FINDINGS

The Department has approved the implementation of broad-based incentive regulation proposals by gas companies for distribution, or non-gas related costs. See Berkshire Gas Company, D.T.E. 01-56, at 7-28 (2002); Boston Gas Company, D.T.E 96-50 (Phase I), at 259-338 (1996). However, the instant filing represents the first proposal to apply a broad-based incentive regulation approach for the recovery of gas supply related costs.[13] As we stated in Section III, above, in evaluating the Company's proposed GCIM, the Department must assess the benefits to consumers, and the effect on the development of retail competition in Massachusetts. That is, we must determine whether the implementation of the proposed GCIM

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[13] Local Distribution Gas Companies ("LDCs") in Massachusetts recover on a dollar-for-dollar basis their gas supply related costs pursuant to the CGAC. The CGAC permits periodic billing changes to recover, on a fully reconciling basis, cost of gas (gas commodity costs, as well as the cost of storing and transporting the gas from production areas to the LDCs' service areas) from ratepayers outside of base rate proceedings.

would impede our efforts, or reverse the progress made to date, to promote customer choice for all customers in the Commonwealth.

The Department notes that Bay State's GCIM proposal represents the use of innovative portfolio management strategies to achieve lower gas supply costs for customers than is likely to occur under the currently used cost-based CGAC mechanism. Our review of the Company's proposal indicates that the GCIM has the potential to result in lower commodity costs for Bay State's default service customers without any deterioration in the service presently provided. The Company's default service customers will see exactly the same CGAC service under the GCIM, the only difference being that the price will be no higher than market and may be lower than what it would be under the current regulatory regime (Tr. 2, at 124-125). This is because the Company will assume all the down-side financial risk associated with purchases that result in costs that are higher than the published market indices, and thus will absorb 100 percent of the net losses. Further, Bay State will flow through to customers via the CGAC 25 percent of the net savings, thus reducing the overall gas supply costs. As a result, the GCIM will insure that customers will never pay more than the applicable Gas Adjustment Factor ("GAF") and will provide the opportunity for customers to pay less than the otherwise applicable GAF. Accordingly, the Department concludes that the GCIM proposal has the potential to provide benefits to customers that would otherwise not be available under the existing cost recovery mechanism. However, as we discuss below, these potential benefits must be weighed against the effect on competition in the gas supply market.

The Department's goals for a competitive natural gas industry in Massachusetts are to: (1) provide the broadest possible customer choice; (2) provide all customers with an opportunity to share in the benefits of increased competition; (3) ensure full and fair competition in the gas supply market; (4) provide functional separation between sale of gas as a commodity and local distribution service; (5) support and further the goals of environmental regulation; and (6) rely on incentive regulation where a fully competitive market cannot exist, or does not yet exist. See Gas Unbundling, D.T.E. 98-32-B, at 4 (1999). Therefore, it is important that the Department consider the likely effect of any incentive proposal on the development of a competitive retail market in Massachusetts before it approves such programs.

AllEnergy, the Attorney General, and DOER have expressed concerns regarding the effect of the Company's proposal on competition. In particular, these parties have cautioned the Department that the Company's proposal, if implemented without modification, may (1) reduce the ability of marketers to compete on an equal basis with Bay State, and (2) discourage Bay State's customers from migrating to marketers.

The Department agrees with AllEnergy that incentive mechanisms in the form of financial rewards on gas purchases would lower the effective cost that LDCs incur for gas procurement relative to the cost for third-party marketers. This is because such incentive mechanisms would not be available to the marketers who, unlike the LDCs, are exposed to the risk of non-recovery of gas purchase costs from their customers. For example, if the GCIM were implemented for all customer classes, Bay State would not incur any costs associated with marketing its program and subscribing customers. Third party suppliers, on the other hand, incur such costs as part of the process of acquiring new customers. Therefore, Bay State would receive an unfair advantage over the independent marketers operating in its service territory. This preferential treatment for the LDC would inhibit the development of the retail gas market in Massachusetts.

The Department also agrees with the Attorney General and AllEnergy that where competition exists, financial rewards for gas purchases, like the one proposed by Bay State, could lead to unfair competition in the retail gas market by tilting the playing field in favor of Bay State, thus providing Bay State with a financial disincentive to exit the merchant business. This is because Bay State is an established natural monopoly with an existing customer base and an historic customer demand, price sensitivity, and forecast database from which it can accurately procure contract quantity, which would place competitive suppliers at a disadvantage.

In Risk Management Techniques to Mitigate Natural Gas Price Volatility, D.T.E. 01-100-A (2002) ("D.T.E. 01-100-A"), the Department rejected the use of incentive mechanisms in conjunction with LDCs' risk-management programs because of the negative effect that the use of incentives could have on the development of retail competition in Massachusetts. See D.T.E. 01-100-A, at 17-24. In the instant proceeding, the record shows that there is competition in the commercial and industrial market. That is, commercial and industrial customers have been able to acquire gas from suppliers other than their LDC and benefit from presumably lower gas supply prices. However, the record shows that, currently, there is little or no competition in the residential market, and that AllEnergy is not planning to serve residential customers in the near future (Tr. 3, at 310-313). Indeed, AllEnergy has indicated that it will not object to limiting Bay State's incentive proposal to residential customers only for a short-term duration of three years (Tr. 3 at 312).[14] Therefore, the residential customer classes stand to benefit from lower gas supply prices that will result from Bay State's implementation of its GCIM program.

The Department finds that Bay State's incentive proposal will not have a negative effect on the development of a fully competitive retail market in Massachusetts if the implementation of the GCIM program is limited to the residential market where there is presently very little or no competition. On the contrary, we conclude that residential ratepayers will be better off than they would be absent the implementation of the GCIM program because they may benefit from the reduction in gas commodity costs, but would not be responsible for any of the losses incurred by the Company. The Department, therefore, approves Bay State's GCIM program, but directs the Company to limit the program to residential customers only.

Regarding the Attorney General's contention that approving Bay State's GCIM program could result in a higher cost of capital and lower bond ratings for the Company, the Department notes that the Attorney General's argument is not supported by the record in this proceeding. The Attorney General failed to show any statistical relationship between the implementation of a GCIM program by an LDC and the LDC's bond ratings and cost of capital (RR-D.T.E.-7). Moreover, the Attorney General did not quantify NiSource's risk exposure with respect to its regulated and unregulated subsidiaries (Tr. 3, at 269) and did not quantify the amount of risk associated with the implementation of the GCIM that would cause the

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[14] The Department notes that the three-year term for Bay State's GCIM program essentially coincides with the remainder of the five-year transition period established in Gas Unbundling, D.T.E. 98-32-B (1999).

various rating agencies to downgrade the Company's bond ratings (Tr. 3, at 272). Finally, the Attorney General did not perform a value-at-risk analysis concerning the proposed GCIM (Tr. 3, at 269). Most important, the Department has final say in establishing the allowed cost of capital for ratemaking purposes, and we could ensure that the Company's allowed cost of capital is not affected by the GCIM.

The record shows that Bay State raises much of its capital through NiSource, the parent Company (Tr. 3, at 238, 258). For the GCIM program to have any significant effect on NiSource's bond ratings and cost of capital, Bay State would have to constitute a significant amount of NiSource's total assets. The record, however, indicates that Bay State is a modest part of NiSource, accounting for less than ten percent of NiSource's total assets in 2001 (Tr. 3, at 275; RR-D.T.E.- 4). Further, the record indicates that no LDC has gone bankrupt or suffered devastating results as a result of implementing similarly designed gas cost incentive mechanisms (Tr. 3, at 276; RR-D.T.E.-5;).

Based on the foregoing, and given that Bay State's program is limited to residential customers only, and that the Company will not hedge more than 25 percent of its residential portfolio, the Department rejects the Attorney General's request that we disallow Bay State's GCIM proposal because of the potential risks associated with the use of financial risk-management instruments.

Regarding the proposed margin sharing pursuant to the GCIM, Bay State has proposed to share any net profits from the implementation of the GCIM program with customers in the ratio of 25 percent to customers and 75 percent to the Company if the sum of the gains and losses associated with individual financial transactions is positive for each six-month period

(Exh. BSG-4, at 3). The Company proposes to absorb 100 percent of the net loss and not pass any loss to customers for each six-month period, if the sum of the gains and losses associated with individual financial transactions is negative (id.). The Company will calculate gains and losses associated with individual financial transactions to be net of all transaction costs (id.).

In Interruptible Transportation/Capacity Release, D.P.U.93-141-A, at 59 (1996) ("D.P.U. 93-141-A"), the Department found that the policy of requiring all margins derived from capacity management tools to go to firm customers could "result in a disincentive for LDCs seeking to make investments that are in the public interest." In the same proceeding, the Department recognized that regulations that prohibit margin sharing "may inhibit a gas company from taking advantage of economic opportunities in the market, and that when utilities are given a financial stake in improved efficiency and a greater share of the resulting cost savings, real benefits to customers can be achieved." (Id., citing, D.P.U.94-158 at 47-52(1995); Commonwealth Gas Company, D.P.U. 91-60, at 98 (1991)). The Department noted in D.P.U. 93-141-A that an important consideration in determining the appropriate margin split between ratepayers and shareholders should be to "properly balance the risks and rewards of firm ratepayers and shareholders while providing LDCs with appropriate incentives" (D.P.U.93-141-A, at 64). The Department accepted a 75 percent to 25 percent ("75/25") margin split between ratepayers and shareholders for transactions involving interruptible transportation and capacity release as "reasonable and consistent with the public interest." Id.

In the instant proceeding, the Department finds that the 25 percent to 75 percent ("25/75") margin sharing between ratepayers and shareholders proposed by Bay State is more than fair and reasonable because the Company is willing to assume a greater portion of the risks inherent in gas procurement and supply planning while shielding ratepayers from any losses (See The Berkshire Gas Company, D.P.U. 95-25 at 12, n. 11 (1995); Fitchburg Electric Light and Gas Company, D.P.U. 95-26, at 11, n. 10 (1995), citing D.P.U. 94-158 (1995)). The Department concludes that the 25/75 margin sharing arrangement will provide Bay State with an incentive to offer the GCIM program to residential customers who could benefit from such programs. The Department therefore, finds that the 25/75 margin sharing arrangement proposed by Bay State is fair, reasonable, and consistent with the public interest See D.P.U. 93-141-A, at 64.

Regarding DOER's proposal to adjust the reliability premium, Bay State indicated that it would not object to developing the reliability premium based on a three-year average. We find that the reliability premium proposed by DOER, would be more representative of the fluctuating market conditions, than would a reliance on one isolated year as proposed by the Company. The Department, therefore, directs the Company to apply a three-year historical average in determining the reliability premium associated with its GCIM.

Regarding DOER's proposal that the Company incorporate GCIM activities as part of mid-period revisions to the GCAC, the Department agrees with Bay State that since a CGAC period's net performance results are not known until the end of the period, it is not possible to have mid-period revisions based on actual savings. The Department accepts the Company's proposal to include in its projected CGAC period gas costs, a forecast of any end-of-period net savings from the GCIM based on actual GCIM activity to date, and reasonable estimates of GCIM positions for the remainder of the period.

Regarding DOER's proposal to amend the CGAC tariff to define transaction costs, the Company and DOER appear to be in agreement. The Department directs the Company to include the proposed revisions in its tariff. However, in defining the volumes subject to the GCIM, the Department notes that there is some inconsistency in the record. During the hearings, the Company's witness indicated that the Company would be hedging approximately 25 percent of its normal weather requirements (Tr. 2, at 186). Similarly, the Company has indicated that the financial loss limits established by the Company limit Bay State's ability to transact to less than 25 percent of the Company's normal year requirements (Tr. 1, at 40). However, in its reply brief, it appears that Bay State has increased this level to 80 percent of the Company's normal requirements. Based on the witness' testimony, and the financial limits established by Bay State, we find 25 percent to be an appropriate percentage of the Company's normal weather portfolio to be subject to GCIM. The Department, therefore, directs Bay State to amend its CGAC tariff and limit the Company's hedging activity to a level not to exceed 25 percent of normal requirements associated with the customer class(es) served under Bay State's GCIM program. In view of our decision to limit the GCIM to the residential classes only, the Department directs the Company to implement its GCIM program on 25 percent of its normal residential requirements portfolio. In determining the residential share, the Company must apply the Market Based Allocation ("MBA") methodology approved by the Department in Bay State Gas Company, D.P.U.95-104 (1995).

Regarding the use of financial instruments, the Company has indicated that if over-the-counter ("OTC") financial transactions are used, it would be on a limited basis (Tr. 1, at 31). The Company has also indicated its willingness to use only futures and options products, if the Department finds such a limitation appropriate (id. at 16, 32). The Department notes that there is greater risk associated with OTC products than futures and options trades (id. at 17, 18). In particular, NYMEX generally provides some level of guarantee for futures and options (id. at 18). Unlike futures and options, however, there is no entity that provides guarantees for OTC products (id.). In the event of default or failure to deliver, the aggrieved party has no recourse other than the courts. The Department, therefore, directs the Company to limit its activities to futures and options products, and not to use OTC products.

Regarding the term of the financial instruments that are to be used, Bay State indicated that the Company is willing to accept that the term associated with any GCIM product would not exceed the duration of the GCIM term (Bay State Brief at 31). The Department, therefore, directs the Company to amend the CGAC tariff to indicate that the term associated with any GCIM product will not exceed the duration of the GCIM term.

With respect to the Attorney General's argument that the GCIM will lead to higher incremental costs, the Department finds that this assertion is not supported by the record evidence. The record shows that the Company will not need to hire additional employees to manage the commodity assets, and that Bay State will not incur any incremental costs associated with the accounting and auditing functions as a result of the GCIM (Tr. 2, at 187). Further, the Company did not anticipate any added costs associated with insurance or bonding (id.). Accordingly, the Department finds that the GCIM will not cause any incremental costs in the areas of accounting, auditing, personnel, or insurance.

Regarding the recovery of GCIM administrative costs, the Company proposes to recover any such costs in a future proceeding only to the extent that the Company can demonstrate that ratepayers would continue to see a net benefit as a result of the GCIM program if those costs are recovered. Consequently, if the Company wishes to seek recovery of any administrative costs associated with the GCIM program, Bay State will have to submit a proposal in its next base rate filing to that effect, and demonstrate that customer savings from the GCIM program exceed the level of administrative costs to be recovered.

Regarding DOER's recommendation on the termination of the GCIM, the Department finds that the GCIM should terminate at the expiration of the proposed three-year term, but subject to possible renewal dependent on experience with the program and the state of development of competition. The Department has previously stated that an incentive proposal should have a minimum time horizon to give the incentive plan enough time to achieve its goals. D.P.U. 94-158 at 66 (1995). Further, the three-year period coincides with the remainder of the five-year transition period established in Gas Unbundling, D.T.E. 98-32-B (1999).

Finally, if the Company wishes to implement its GCIM program as approved, it should submit revised tariff sheets to the Department for approval prior to the 2003 off-peak CGAC filing.

VII. ORDER

Accordingly, after due notice, hearing and consideration, it is

ORDERED: That Bay State Gas Company's petition to establish a Gas Cost Incentive Mechanism is APPROVED but for residential customers only; and it is

FURTHER ORDERED: That Bay State Gas Company follow all other directives contained in this Order

By Order of the Department,

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Paul B. Vasington, Chairman

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James Connelly, Commissioner

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W. Robert Keating, Commissioner

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Eugene J. Sullivan, Jr., Commissioner

____
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).